

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 17, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

06od-121

Oahu

Resubmittal: Sale of Reclaimed Land to Eddie D. Holmes and Lorraine M. Holmes, Kahaluu, Oahu, Tax Map Key: 4-7-10:13, seaward.

APPLICANTS:

Eddie D. Holmes and Lorraine M. Holmes, as tenants by the entirety, whose business and mailing address is P.O. Box 162, Cambria, California 93428.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kahaluu situated at Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: 4-7-10:13, seaward, as shown on the attached map labeled Exhibit A.

AREA:

1,222 square feet of seawall and filled land, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

CURRENT USE STATUS:

Unencumbered with encroachments.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Not applicable. The applicants as landowners are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Provide documentation that he/she is the owner of the property abutting the subject reclaimed land;
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the reclaimed land;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Pay for the costs of public notice pursuant to section 171-16(d); and
- 5) Remove engine block from in front of the seawall.

REMARKS:

This request was deferred from the October 27, 2006, agenda item D-7 in order for the applicant to attend this meeting.

The applicants, who are the new owners of the abutting property as of August 2004, need a shoreline certification in order to meet one of the City and County building permit requirements. They had a survey map prepared (see Exhibit C) and a shoreline encroachment in the form of a seawall and filled land was discovered as acknowledged by their surveyor by letter dated April 19, 2006. They then submitted the documents to the Office of Conservation and Coastal Lands (OCCL) for review of the shoreline encroachment. On May 19,

2006, the OCCL responded by writing that they had no objections to a disposition request being processed (see Exhibit B). OCCL confirmed that the aerial photo provided evidence that the wall was constructed prior to 1960.

Mr. and Mrs. Holmes are requesting to purchase the reclaimed land based on the evidence that the seawall construction date was prior to 1962 thus qualifying for the choice of the purchase.

A request for comments was made to various agencies. The Dept. of Hawaiian Homes Lands responded by indicating they had no comment while Office of Hawaiian Affairs had no objections although it concurred with OCCL that the engine block should be removed. The City and County of Honolulu, Planning and Permitting Dept. provided a copy of their letter to Mr. Holmes confirming that their records show the seawall was built prior to 1967 as shown on an aerial photo. Because the seawall was in existence prior to the inception of the Shoreline Setback Regulation on June 2, 1970, it is deemed nonconforming as long as it has not been extended seaward after that date.

It is the Board's policy to require a deposit for the purchase of the reclaimed lands before moving forward to process a shoreline certification application. In the past, shoreline certifications or other approvals were given prior to the applicant resolving the encroachment problem. This made it difficult for staff to compel the applicants who later refused to execute the conveyance documents and make the requested payment. Therefore, staff is recommending requiring a deposit in the estimated amount to purchase the reclaimed lands.

The Appraisal Section has estimated the sale consideration deposit to be \$204,940. With documentation fees, the total estimated deposit amount is \$204,995. The actual consideration will be determined by a full appraisal. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposited amount ends up being more than the appraised value to purchase the reclaimed lands, then the applicants will be reimbursed the difference. If the deposit is not sufficient to cover the actual appraised value, then the applicants must pay the difference. In the event the applicants fail to consummate the purchase of the reclaimed lands and resolve the encroachment problem, then the applicants will be required to remove the encroachments to the satisfaction of the Department.

Mr. Holmes discussed the estimated consideration deposit with staff and explained the amount appeared high based on an appraisal he obtained for his property. Mr. Holmes offered to make a deposit of \$40,000.00. Staff believes that the applicants should be required to deposit the full \$204,995 because there is a concern that the applicants could receive a shoreline certification, a building permit, and thereafter decide not to

consummate the purchase of the reclaimed lands and resolve the encroachment. The methodology used to determine the deposit in this instance is consistent with Board past actions and requirements over the last three years for shoreline encroachments.

Following the purchase of the reclaimed land, the grantee will be required to consolidate the reclaimed land with the grantee's abutting property through the county subdivision process.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is recommending a fine of \$500, as the subject encroachment is over 100 square feet.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Find that the sale of the subject, reclaimed land is not prejudicial to the best interest of the State, community or area in which subject reclaimed land is located.
3. Authorize the sale of the subject reclaimed land to Eddie D. Holmes and Lorraine M. Holmes covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the county subdivision process;
 - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Require the applicant to deposit with the Department the sum of \$204,995.00 for the estimated value for the purchase of the reclaimed lands pursuant to the conditions set forth in

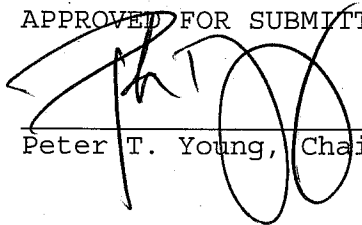
the Remarks section above.

Respectfully Submitted,



Al Jodar
Land Agent

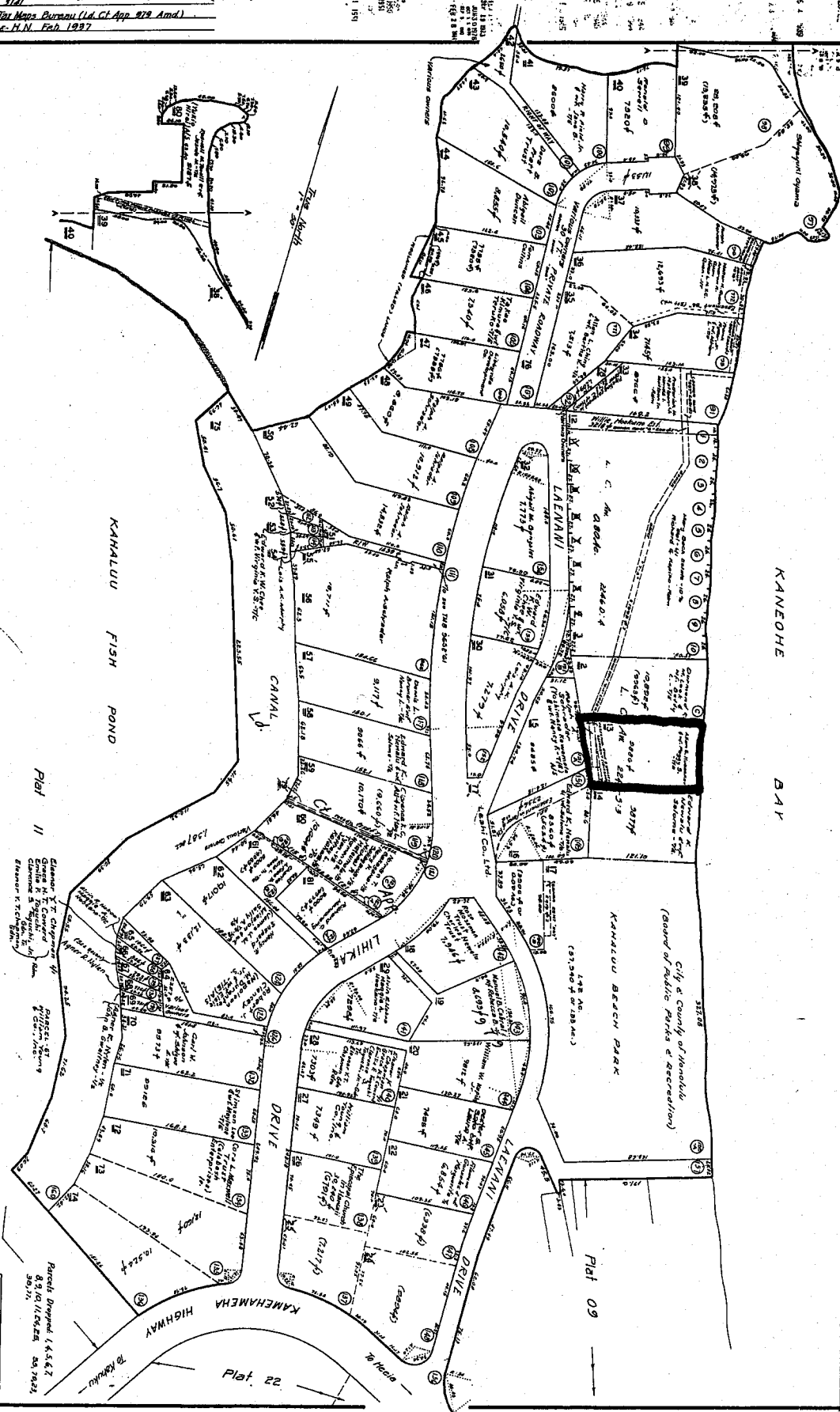
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Map No. 5147
 Source: Tax Maps Bureau (Ld. Ct. App. 979 Amd.)
 By: P.K. & H.N. Feb. 1997

Разрешение на строительство
 Канал, Рыбный пруд, Озеро (Ld. Ct. App. 979 Amd.)

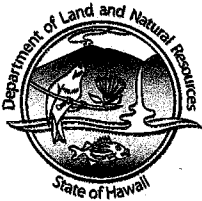


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EXHIBIT "A"

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

2006 MAY 19 P 3:30



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MAY 19 2006

REF:PB:CC

File Number Encroachment: OA-06-13

MEMORANDUM:

TO: Al Jodar, Land Agent
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at Kaneohe Bay, Oahu (TMK: 4-7-
10 06:13) Holmes 47-356 Waihee Rd.

This is in response to your May 12, 2006 request to resolve a state land encroachment seaward of private property at Kaneohe Bay, Island of Oahu.

According to information and maps contained with your request, there appears to be approximately 1,222 square feet of encroachment (fill, wall).

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the County Planning/Building Department for the subject improvements. However, aerial photographs provide evidence that the encroachment was in existence prior to 1960.

As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;

EXHIBIT "B"

3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

The inter-tidal zone is a sand/mud coastline, submerged at high tide.

Public Access:

Public access to the shoreline is poor. The area is not suited to beach recreation. However, the waters offshore are popular for boating recreation.

Effect of Removing the Encroachment on:

Beach Resources: *The removal of the encroachment could have a negative impact on coastal waters, if done improperly. Removal of the wall without immediate placement of erosion control measures could result in sedimentation of state waters.*

Public Access: *OCCL staff has determined that public access would not be enhanced by removal of the encroachment. The area is not suitable for shoreline access. Boating and fishing would not be affected.*

Affect on Adjacent Properties: *It is not know what effect removal of this encroachment would have on the surrounding parcels. Though the seawall is a portion a long seawall extending beyond the parcel on both sides, and removal of this section of wall may destabilize other sections.*

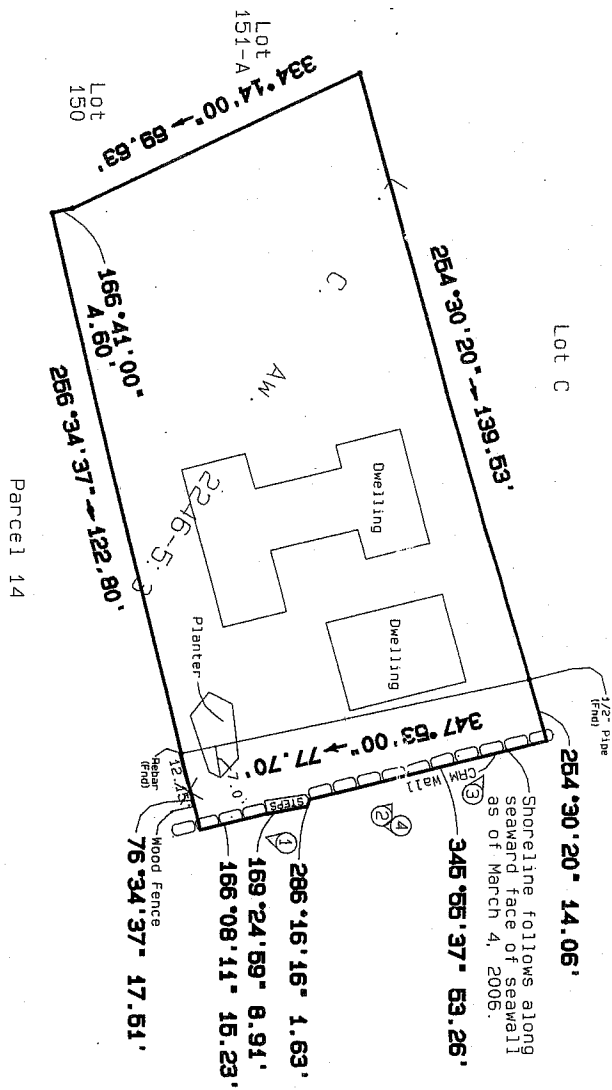
Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement would have no adverse impacts on natural resources, including beach resources and public access. Therefore, the OCCL has no objections to a disposition request being processed. Pursuant to Chapter 171, the landowner is required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

The aerial photograph did not provide any evidence for the straight-six engine block in front of the seawall. The landowner shall remove the engine block as this could represent an unauthorized use.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381.

cc: Oahu Board Member
Chairperson's Office
City and County of Honolulu
Department of Planning and Permitting
Eddie Holmes
PO Box 162
Cambria, CA 93428

EXHIBIT "C"



SHORELINE SURVEY MAP

Por. L. C. Aw. 2246:5:3
at Kahaiuu, Koolaulupo, Oahu, Hawaii
T.M.K. (1) 4-7-10:13
Scale 1 in. = 30 ft. March 5, 2006

Owner/Address:
Eddie D. & Lorraine M. Holmes
P.O. Box 162
Cambridge, CA 93428

Prepared By:
Technical Field Data Service, Inc.
44-023 Aina Mōi Place
Kaneohe, Hawaii 96744

This work was performed
me or under my supervision
Francis E. McGrail
Francis E. McGrail
Licensed Land Surveyor
Certificate Number 727

